



AMERICAN TRUCKING ASSOCIATIONS

2200 Mill Road ★ Alexandria, VA ★ 22314-4677

ASPA-00-7092-1

Driving Trucking's Success

a

January 18, 2000

Mr. Robert McGuire
Acting Associate Administrator for Hazardous Materials Safety
Research and Special Programs Administration
U. S. Department of Transportation
400 7th Street, SW
Washington, DC 20590-0001

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HMSA-00-7092-1

Attention: Hazardous Materials Preemption Docket

Re: Application for Preemption Determination in accordance with 49 CFR Part 107, Subpart C, Section 107.203, regarding provisions of New Mexico "LPG and CNG Act" (N.M. Stat. Ann. §§ 70-5-1 to 70-5-23 (1998)) and corresponding regulations of the New Mexico Construction Industries Division, Liquefied Petroleum Gas Bureau (Title 19, Chapter 15, Part 4 [19NMAC 15.4]).

Dear Mr. McGuire:

The American Trucking Associations, Inc. ("ATA"), with offices located at 2200 Mill Road, Alexandria, VA 22314, is the trade association for the trucking industry. Together with our affiliated conferences, councils, and state associations, ATA represents over 30,000 motor carriers of all types and sizes throughout the United States. ATA files this application for preemption determination on behalf of our member companies affected by the provisions of the LPG and CNG Act.

ATA is requesting a determination of preemption of certain requirements of the State of New Mexico's 1978 "LPG and CNG Act" as found in Chapter 70 Article 5 of the New Mexico Statute Annotated (NMSA 1978 Chapter 70, Article 5) and in the corresponding regulations of the New Mexico Construction Industries Division's Liquefied Petroleum Gas Standards as found in Title 19 Chapter 15 Part 4 of the New Mexico Annotated Code (19NMAC 15.4). Specifically, ATA requests consideration of the following provisions of the NMSA 1978 and 19NMAC:

1. NMSA 1978 70-5-7 (Liquefied Petroleum Gas Handling License)(19 NMAC 15.4.9.1 through 15.4.9.5);
2. NMSA 1978 70-5-9 (New Mexico Liquefied Petroleum Gas Tank Inspection)(19 NMAC 15.4.10.1); and
3. NMSA 70-5-10 (Revenue; Suspense Fund)(19 NMAC 15.4.14.3C, 15.4.15.1, 15.4.15.13, and 15.4.15.14).



As discussed below, certain of the requirements contained in sections of the New Mexico Statute Annotated (NMSA) and the New Mexico Annotated Code (NMAC) regarding transportation of Liquefied Petroleum Gases (LPG) and/or Liquefied Natural Gases (LNG) are obstacles to the accomplishment of the objectives of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) and should be preempted according to the provisions of 49 U.S.C. § 5125(a)(2).

I. Background.

NMSA 1978 70-5-6-(A) General License states that:

“No person, firm or corporation shall engage in this state . . . , nor shall any person, firm or corporation engage in the manufacture, sale, transportation, dispensing or storage of LP gases within this state, . . . without having first obtained from the bureau a license to do so for each main and branch office or businesses operated within the state pursuant to the LPG and CNG Act [this article] [emphasis added].”

19 NMAC 15.4.15.1 (LP-1) Wholesale Sale or Delivery of LP Gas states:

“A licensee under this classification is authorized to wholesale, transport, and/or deliver gas... ”

Consequently, motor carriers transporting LPG and CNG in New Mexico must obtain a license from the State to do so and as licensees are then subject to all of the requirements provided for in 19 NMAC 15.4 (Code). These additional requirements go beyond those contained in 49 CFR Parts 100-180 of the Hazardous Materials Regulations (HMR), create confusion, and impose burdens on transporters to such an extent that they are obstacles to the accomplishment of the Hazardous Materials Transportation Act’s (HMTA)[49 U.S.C. 5101, et seq] objectives, and should, therefore be preempted.

II. New Mexico Stat. Ann. § 70-5-7 Requiring Competent Employees in Transporting, Dispensing, Installation, Service or Repair and 19 NMAC 15.4.9.1 Examination.

New Mexico Stat. Ann. § 70-5-7(A) states:

“The bureau may require each person, firm or corporation that transports or dispenses LP gas or that



installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission.”

19 NMAC 15.4.9.1 Examination states:

“All personnel whose duties require that they transport or dispense LG Gas shall prove by passing an examination, as required by the Bureau, that they are familiar with minimum safety standards and practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination by the Bureau.”

Under the authority of this provision, the New Mexico Liquefied Petroleum and Compressed Gas Bureau (“Bureau”) requires any person who operates, loads, or unloads an LP gas transport vehicle, including drivers in interstate commerce, to take an examination before being allowed to perform those functions as they relate to LP gas within the State of New Mexico. These tests are scheduled at various times at different locations throughout the State. All applicants for licensure, whether domiciled inside or outside of New Mexico, must take the test at one of the designated locations within the State. Consequently, compliance with the New Mexico testing requirement imposes cost and administrative burdens on transporters, confusion, reduced compliance, and decreased safety would result if transporters faced a multiplicity of such requirements.

The requirement to test at the state level in order to be able to transport, load, or unload LP gas, which is a Division 2.1 Flammable Gas, and therefore a hazardous material, is in addition to the training and testing requirements in the Hazardous Materials Regulations (“HMR”) at 49 CFR Part 172 Subpart H, §172.702(a) and (d) and §172.704(a) through (c). While 49 CFR §172.701 allows states to impose more stringent training requirements, they are permitted to do so only if those requirements do not conflict with the requirements of Part 172 Subpart H and Part 177 § 177.816, and “[a]pply only to drivers domiciled in that State”. New Mexico’s requirement for testing is stricter than the training requirements of the HMR and is applied to drivers that are domiciled outside of New Mexico. It, therefore, represents an obstacle to accomplishing the full purposes and objectives of the HMTA and must be preempted.

The New Mexico requirement for motor vehicle operators loading, unloading or transporting LP gas is similar in nature to the State of Maryland requirement that was preempted by the Research and Special Programs Administration (RSPA) in PD-7(R), 59 FR 28913, 28919 (June 3, 1994) (noting that “operators potentially would be



subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens,” RSPA found that training requirements as applied to “operators not domiciled in Maryland” were an “obstacle to accomplishing the full objectives and purposes of the HMTA and [were] preempted.”); see *also*, PD-13(R), 63 FR 45283 (August 25, 1998) (preempting requirement that motor vehicle drivers obtain certificate of fitness to be eligible to deliver LPG.)

Because the additional “testing” requirement reaches beyond the domiciliaries of the State of New Mexico, NM Stat. Ann. § 70-5-7(A) and 19 NMAC 15.4.9.1 as they apply interstate operators domiciled in other states should be preempted.

III. New Mexico Stat. Ann § 70-5-9 Annual License Fees; Inspection Fees and §70-5-10 Revenue; Suspense Fund and 19 NMAC 15.4.15.1 LP-1 Wholesale Sale or Delivery of LP Gas and 19 NMAC 15.4.15.12 Annual Renewal Fee Per Qualifying Party Identification Card.

New Mexico Stat. Ann, § 70-5-9 (A) states:

“For the purpose of defraying the expenses of administering the laws relating to the use of CNG motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable license fees as set, classified and defined by the bureau for each operating location.”

Additionally, NM Stat. Ann § 70-5-10 states, regarding fees:

“All fees and money collected under the provisions of the LPG and CNG Act [this article] shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. The bureau may maintain a “special suspense fund” with the division in an amount of one thousand dollars (\$1,000) budgeted by the bureau for the purpose of making any necessary refunds. The bureau shall, with the advice and consent of the director of the division, employ inspectors, assistants and other necessary help as may be required to carry out its lawful duties.”



19 NMAC 15.4, License Classifications, Scopes, and Fees states:

“License classifications are defined and annual license fees are set as follows:

15.1 LP-1 Wholesale sale or delivery of LP Gas: \$125.00

A licensee under this classification is authorized to wholesale, transport, and/or deliver gas in vehicular units into or out of any location except that of an ultimate consumer.

15.12 Annual renewal fee per qualifying part) identification card: \$10.00.”

Motor carriers who deliver LP gas in New Mexico are in category LP-1 and must pay an annual flat fee of \$125.00, plus \$10.00 for each “Qualifying Party Card.” These fees are then placed into the State’s general fund and are not earmarked for purposes related to the transportation of hazardous material.

The HMTA provides that a “State . . . may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material . . .” [49 U.S.C. § 5125(g) (1)]. The New Mexico fees fail both requirements.

First, because the fees are annual, flat charges that are unapportioned to the level of a motor carrier’s presence or activities in the State, they are structurally discriminatory and violate the Commerce Clause. A state fee that violates the Commerce Clause cannot be considered to be “fair.” See, PD-21(R), 64 FR 54474 (October 6, 1999)(“Because Tennessee’s remedial action fee imposed on hazardous waste transporters is not based on some fair approximation of the use of the facilities and discriminates against interstate commerce, it is not fair and violates 49 U.S.C. 5125(g)(1) and is preempted... ”).

Flat annual fees, like New Mexico’s, discriminate against and impose an undue burden on interstate motor carriers and thus violate the Commerce Clause. The privilege of conducting LPG and CNG transportation in New Mexico is inherently more valuable to intrastate carriers that conduct all of their operations in the State than it is to those carriers that operate predominantly in interstate commerce. Therefore, the practical effect of collecting regulatory costs on a per-company basis is to place a disproportionate share of those cost on interstate motor carriers. “[I]mposition of [a] flat tax [] for a privilege that is several times more valuable to a local business than it is to its out-of-state competitors is unquestionably discriminatory and thus offends the Commerce Clause.” *American Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 296 (1987). Moreover, flat charges, like the New Mexico fees, inevitably expose interstate



trucks to duplicative taxation. “[T]he interstate carrier will be subject to the privilege taxes of several States, even though his entire use of the highways is not significantly greater than that of intrastate operators who are subject to only one privilege tax.” *Scheiner*, at 282 (citation omitted).

Flat fees imposed on hazardous materials and hazardous waste haulers have been routinely struck down as violative of the Commerce Clause. *See, American Trucking Associations, Inc. v. Secretary of State*, 595 A.2d 1014 (Me. 1991) (\$25 per-truck hazardous material transporter annual charge struck down); *American Trucking Associations, Inc. v. Secretary of Administration*, 613 NE 2d 95 (Mass. 1993) (\$200 per-truck annual hazardous waste transporter fee held unconstitutional); *American Trucking Associations, Inc. v. Wisconsin*, 556 N.W.2d 761 (Wis. App. Ct. 1996) (\$400 per-company, per-activity hazardous material transporter annual fee found to violate the Commerce Clause).

The New Mexico \$125 per-company annual LPG/CNG delivery fee (and associated \$10 Qualifying Party Card fee) are unquestionably flat, unapportioned charges that discriminate and burden interstate commerce as discussed above. Accordingly, such charges cannot be considered “fair” as contemplated by Section 5125(g)(1) and must be preempted.

Second, the fees are placed into the State of New Mexico’s general fund and are not earmarked for hazardous materials transportation purposes. Although NM Stat. Ann. § 70-5-10 states generally that the Bureau may employ staff to carry out its lawful duties, there is no tracking of fees paid by motor carriers and no assurance that the moneys paid by motor carriers will actually be used for purposes related to hazardous materials transportation, including enforcement and planning, development and maintenance of emergency response capability.

Because the fees collected from transporters as required by 19 NMAC 15.4.15.1 and .15.12 and deposited in the general fund of the State per NM Stat. Ann. § 70-5-10 are not specifically earmarked for those purposes set forth in 49 U.S.C. 5125(g), they should be preempted.

IV. New Mexico **Stat. Ann. § 70-5-9 (C) Annual License Fees; Inspection Fees**

New Mexico Stat. Ann. § 70-5-9 (C) states:

“In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities.”



19 NMAC 15.4.10.1 Annual Inspections states:

“There shall be an annual safety inspection, made by an inspector of the Bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection.”

19 NMAC 15.4.14 Printed Forms, Permits, and Fees requires in:

.3.C LP Gas Visual Cargo Tank and Equipment Inspection Form, an accompanying fee of \$37.50; and
for Re-inspection of Cargo Tank Equipment and additional charge for re-inspection a fee of \$37.50.

While the statute and Code make reference to “safety inspections” of “LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities,” there is no mention as to the process by which the inspection should be completed. According to one company, though, each LP gas trailer must be presented to inspectors in New Mexico at a preset date and location, regardless of the location of the motor carrier’s principal place of business. A fee of \$37.50 must be prepaid for each such inspection. See Affidavit of Lloyd Dean, Vice President of Operations, Basin Western, Inc.

ATA is aware that RSPA has, in the past, approved inspections and related fees relative to permits. See PD-13 (R), 63 FR 45283, 45286 (approving inspection and fee where fee covered the cost of conducting the inspection and actually issuing the permit). However, the proliferation of inspection requirements (e.g, in New Orleans, LA; Houston, TX; Nassau County, NY; Broward County, FL; and Cleveland, OH) is alarming and is causing disruptions in motor carrier operations. Because there is a need to either take the vehicle out of service, or vary the route when loaded, in order to accommodate the inspection, there are unnecessary delays in the transportation of hazardous materials.

We believe that RSPA has erred in not considering the impact on the interstate transportation of hazardous materials of multiple jurisdictions requiring fee supported annual inspections. Under the U.S. Supreme Court’s “internal consistency” test, a law’s impact on interstate commerce is examined in the context of its impact if every other jurisdiction imposed an identical requirement. *Oklahoma Tax Comm’n v. Jefferson Lines*, 115 S.Ct. 1331, 1338 (1997). There can be little dispute that interstate hazardous materials transporting commerce would come to a halt if every jurisdiction in which a truck operated (perhaps thousands of cities, counties, and states) required that the truck undergo a separate, duplicative fee-supported inspection. If RSPA is concerned about the theoretical nature of the internal consistency analysis, it need look



no further than the inspection requirements cited above to assure itself that the burden of cumulative inspections and fees is already occurring.

The multiple inspections and fees a hazardous materials transporting vehicle now faces cannot help but result in unreasonable transportation delays and thus are contrary to the HMR's mandate that shipments of hazardous materials be transported without unnecessary delay (see 49 CFR § 177.800(d)).

Motor carriers are already subject to Federal annual and random roadside vehicle inspections according to 49 CFR Part 396 and to inspection, repair and maintenance requirements for cargo tanks in 49 CFR Part 180 §§ 180.401 through 180.417. Therefore, New Mexico's requirement for safety inspections is redundant, causes unnecessary delay in the transportation of hazardous materials, and should be preempted as an obstacle to the accomplishment of the full purposes and objectives of the HMTA.

V. Conclusion

Based on the information provided in this application, ATA urges RSPA to preempt certain aspects of the State of New Mexico's requirements found in NM Stat. Ann. Chapter 70 Oil and Gas, Article 5 Liquefied and Compressed Gases and in 19 NMAC 15.4 as they relate to:

- 1) Examinations for drivers of interstate motor carriers;
- 2) Fees for motor carriers regarding permits and inspections; and
- 3) Safety inspections of vehicles used to transport LP gas.

Thank you for the opportunity to submit this application. If you have any questions regarding information supplied in this application, please contact the undersigned at: 703-838-1849 (Phone); 703-683-1934 (FAX); or by e-mail at: pbomgard@trucking.org.



VI. Certification of Notice as Required in 49CFR Part 107 Section 107.205(a).

I certify that a copy of this application has been sent this 18 "day of January, 2000 to: Mr. Michael Chapman, Chairman, Construction Industries Commission, at P. O. Box 25101, Sante Fe, New Mexico 87504.

Signature Paul M. Bomgardner

Date 01 Feb 2000

Respectfully submitted:

Paul M. Bomgardner

Paul M. Bomgardner
Director, Hazardous Materials Policy
American Trucking Associations, Inc.

Attachments:

Affidavit of:
Mr. Lloyd Dean
VP Operations
Basin Western, Inc.

State of New Mexico Construction Industries Division
Liquefied Petroleum Gas Standards
Title 19:Chapter 15:Part 4

State of New Mexico Statute Annotated
Article 5. Liquefied and Compressed Gasses
70-5-1 through 70-5-23, NMSA 1978



Before the
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION
Washington, DC 20590

In the Matter of:)
AMERICAN TRUCKING ASSOCIATIONS)
APPLICATION FOR DETERMINATION)
THAT CERTAIN REQUIREMENTS)
IMPOSED BY THE STATE OF NEW MEXICO)
ON PERSONS INVOLVED IN THE)
TRANSPORTATION OF HAZARDOUS)
MATERIALS TO OR FROM POINTS IN THE)
STATE ARE PREEMPTED BY THE)
HAZARDOUS MATERIALS)
TRANSPORTATION ACT)

AFFIDAVIT OF LLOYD DEAN

State of UTAH

SS.

County of *Uintah*

Lloyd Dean, being duly sworn deposes and says:

1. I am the Vice President of Operations and the Chief Operating Officer of Basin Western, Inc. (Basin Western), whose address is P. O. Box 877, Roosevelt, Utah 84066. At present, Basin Western has no terminals or other facilities located in the State of New Mexico, nor are any of Basin Western's drivers domiciled in the State.
2. I have been employed in my present position for six years. In my capacity as Vice President of Operations I am responsible for Basin Western's compliance with all Federal, State and local laws, rules, regulations and ordinances which impact motor carrier operations, such as the New Mexico regulatory requirements for the transportation of Liquefied Petroleum Gas (LPG).
3. Basin Western is an interstate motor carrier providing transportation services throughout the Western United States Inter-mountain region, including the State of New Mexico. Basin Western transports various types of petroleum products, and has in its fleet approximately 45 vehicles dedicated to the transportation of LPG.
4. In order to legally transport LPG into and through the State of New Mexico, Basin Western must pay an annual flat fee of \$125.00 to the State of New Mexico

Construction Industries Division in order to obtain its LP-1 license. Basin Western has paid such annual fee for the past two (2) years.

5. Also, in order to legally transport LPG into and through the State of New Mexico, Basin Western must qualify each of its drivers engaged in such transport. Each driver, whether or not domiciled in New Mexico, must be made available for a written examination. The exams are scheduled and conducted by the National Assessment Institute. Test dates for the Farmington, NM area are generally set for the second Saturday of each month at the San Juan Community College in Farmington, New Mexico. Basin Western must pay a fee of \$25.00 for each driver to be examined. Upon successful completion of such examination, Basin Western must pay an annual qualifying party card fee of \$10.00 on behalf of each of these drivers.
6. Finally, to be in compliance, Basin Western must annually submit each of its 45 vehicles engaged in LPG transport in New Mexico for inspections by the State. Appointments for vehicle inspections are made by informing the Division prior to the date of entry into the State. At that time, a representative of the State informs Basin Western as to the location and time of the inspection. If however, no inspector is available on the date, Basin Western is prohibited from transporting LPG to destinations within or through the State in that vehicle and must rearrange its schedule for delivery of the product and later inspection of the vehicle or risk penalty of non-compliance. Twice, Basin Western has tried but been unable to schedule inspections in time to meet scheduled deliveries. Additionally, Basin Western must pay an annual inspection fee of \$37.50 for each vehicle inspected. New Mexico does not waive its inspection requirement or otherwise recognize inspections of the vehicle conducted for other purposes.
7. The State of New Mexico's LPG licensing system places various burdens on Basin Western's operations. Collectively, the flat \$125.00 annual LP-1 license fee, the \$25.00 driver examination fee, the annual \$10.00 qualifying party card fee for each driver, and the annual \$37.50 vehicle inspection fee for each of Basin Western's vehicles used to transport LPG, impose a significant cost. This cost would be prohibitive if replicated by other states.
8. The State of New Mexico's LPG driver qualification requirements are also burdensome and redundant. Drivers must take time to prepare for the test by studying the Division's manual and then must be made available in Farmington, New Mexico for a day of testing. This, of course, takes drivers out of Basin Western's usual operations. Basin Western thus incurs travel expense, driver wage-related costs, and lost business income. Moreover, in order to operate legally in interstate commerce, Basin Western requires its drivers to hold a valid Commercial Drivers License (CDL) with appropriate endorsements for Hazardous Materials and Tank Vehicle operations. Basin Western drivers are trained in accordance with the hazardous materials training requirements in 49 CFR part 172 subpart H and section 177.816. Therefore, Basin Western views the training

and testing requirements of the State of New Mexico for transportation of LPG as needlessly redundant.

9. The State of New Mexico's LPG transport vehicle inspection requirements are also burdensome. Because Basin Western does not know in advance which of its vehicles will be used to transport LPG into or through the State, Basin Western, to be in compliance would need to submit each of its 45 vehicles for inspection each year. This practice would place a tremendous burden on Basin Western's operations causing lost productivity and equipment downtime. Additionally, in those instances where inspectors are not available, Basin Western either incurs financial harm, including lost revenue and degraded customer relations or must risk penalty for non-compliance. Moreover, Basin Western complies with the Federal annual and daily vehicle inspection requirements in 49 CFR part 396 and the inspection, repair and maintenance requirements for cargo tanks in 49 CFR Part 180 and its vehicles are subject to an average of 112 roadside inspections per year, conducted by various State agencies. Therefore, Basin Western views New Mexico's vehicle inspection requirements as needlessly redundant and economically burdensome.

I affirm under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

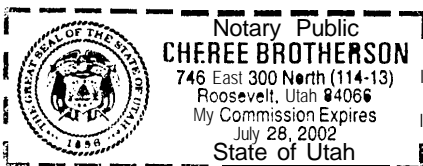


Lloyd Dean

Subscribed and sworn to
before me this 7TH day of
January, 2000

Notary Public: 

My Commission Expires: ____.



STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES DIVISION



LIQUEFIED PETROLEUM GAS STANDARDS

REGULATION & LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

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EFFECTIVE DATE:
NOVEMBER 15, 1997

CONSTRUCTION INDUSTRIES DIVISION

LIQUEFIED PETROLEUM GAS STANDARDS

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REGULATION AND LICENSING DEPARTMENT
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TITLE 19: NATURAL RESOURCES & WILDLIFE
CHAPTER 15: OIL AND GAS
PART 4: NEW MEXICO LP GAS STANDARDS

1. ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department. [11-15-97]
2. SCOPE:
 - 2.1 All individuals or persons performing work that will involve the use of storage or providing service, for LP Gas and all facilities, equipment, appliances, structures or installations in the State of New Mexico. [11-15-97]
 - 2.2 The provisions of these rules and regulations shall apply to the use and enforcement of the LP and CNG Gas Act, Construction Industries Division Rules and Regulations, national publications that are law in New Mexico (such as NFPA 54), and Codes adopted by the Construction Industries Commission. [11-15-97]
 - 2.3 It also serves to establish administrative procedures for the LP Gas Bureau, including, but not limited to, licensing and permitting procedures. [11-15-97]
3. STATUTORY AUTHORITY: These rules and regulations are adopted pursuant to Section 70, Article 5 NMSA 1978 and Section 60-13-9 (F) NMSA 1978. [11-15-97]
- 3A PRE-NMAC REGULATORY FILING HISTORY: The material in this part was derived from that previously filed at the State Records Center and Archives under: CIC LPG 76-5, General Order No. 21, Rules and Regulations Relating to LPG Industry, filed 1-9-76; CID LPG 80-2, (Code LP-1) Code for the Liquefied Petroleum Gas Bureau, Chapters I thru VI, filed 4-10-80; CID-LPG-LP-1-85-1, Liquefied Petroleum Gas Code, Code LP-1, filed 11-20-85; CID LPG 80-1, (Code LP-2) NFPA No. 58, Storage and Handling Liquefied Petroleum Gases, 1979, filed 4-9-80; LP-2-NFPA-58-83, NFPA No. 58, Storage and Handling Liquefied

Petroleum Gases, 1983, filed 6-30-83; LP-2-NFPA –58-86, NFPA No. 58, Storage and Handling Liquefied Petroleum Gases, 1986, filed 11-18-86; LP-2-NFPA-58-89, NFPA No. 58 Storage and Handling of Liquefied Petroleum Gases 1989, filed 9-14-89; LP-2-NFPA-58-92, NFPA No. 58 Standards for the Storage and Handling of Liquefied Petroleum Gases. 1992, filed 1-27-93; Code LP-3, NFPA No. 54, 1980 National Fuel Gas Code, filed 6-25-81; LPGB-LP-3-85-1, NFPA No. 54, 1984 National Fuel Gas Code, filed 5-22-85; LPGB-LP-3-88-1, NFPA No. 54, 1988 National Fuel Gas Code, filed 1-20-89; LP-3-NFPA-54-92, NFPA No. 54, 1992 National Fuel Gas Code, filed 7-7-93; CNG-4-NFPA-52-92, 1992 NFPA 52 Compressed Natural Gas (CNG) Vehicular Fuel Systems, filed 7-7-93; CIC LPG 67-4, General Order No. 11, Storage Handling LPG; CIC LPG 69-4, General Order No. 12, Storage Handling LPG; CIC LPG 72-5, General Order No. 16, Storage Handling LPG, filed 8-23-72; CIC LPG 75-5, General Order No. 22, Storage Handling LPG, filed 1-28-75; CIC LPG 70-10, General Order No. 13, Certain Fees, filed 6-12-70; CIC LPG 75-11, General Order No. 14, License Classification and Fees, filed 12-10-70; CIC LPG 73-4, General Order No. 19, Uniform Insurance Endorsement and Certificate, filed 7-6-73. [11-15-97]

4. DURATION: Permanent; until later amended, repealed or replaced. [11-15-97]
5. EFFECTIVE DATE: November 3, 1997, unless a later date is cited at the end of a Section or Paragraph [11-15-97].
6. OBJECTIVE: The objective of 19NMAC 15.4 is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in safer installations, equipment, facilities, appliances, structures, and service. [11-15-97]
7. DEFINITIONS:
 - 7.1 “Accessible” means having access to; may require the removal of a panel, door or similar covering of the item described. [11-15-97]
 - 7.2 “Approved” means acceptable to the authority having jurisdiction. [11-15-97]
 - 7.3 “Authority Having Jurisdiction” means the New Mexico LP Gas Bureau. [11-15-97]
 - 7.4 “Bulk Plant” means storage facilities for liquid LP gas awaiting transfer. [11-15-97]
 - 7.5 “Bureau” means the liquefied petroleum and compressed gas bureau of the division. [11-15-97]

19 NMAC 15.4

- 7.6 “Certified” means “listed” or “labeled”. [11-15-97]
- 7.7 “Certificate of Competence” means a written certificate issued by the LP Gas Bureau to an LP gas installer based on evidence of competence. [11-15-97]
- 7.8 “Clearance” means the distance between the appliance, chimney, vent chimney or vent connector, or plenum and the nearest surface. [11-15-97]
- 7.9 “Code” means NFPA 52, NFPA 54, NFPA 57, NFPA 58 and NFPA 501 C and other codebooks adopted and amended by the commission. [11-15-97]
- 7.10 “Commission” means the construction industries commission. [11-15-97]
- 7.11 “Compressed Natural Gases” and “CNG” means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel. [11-15-97]
- 7.12 “Concealed LP gas piping” means all LP gas piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping. [11-15-97]
- 7.13 “Connector, gas appliance” means a connector, used to convey fuel gas three feet or less in length (six feet or less for gas ranges), between a gas shut off valve and gas appliance in the same room. [11-15-97]
- 7.14 “Consumer’s LP gas system” means any arrangement of LP gas piping, extending from the point of delivery to and including all outlets, appliances and appurtenances, installed under the provisions of the Code, which the consumer is responsible to maintain in a serviceable condition, exclusive of piping, tanks, regulators, valves, fittings, etc. owned by the gas company. [11-15-97]
- 7.15 “Distributing plant” means a facility with the primary purpose of distribution of LP gas, which receives LP gas in tank car, truck transport or truck lots, and distributes such LP gas to end-users by delivery tank truck or through gas piping; such plants have bulk storage of 2,000 gallons water capacity or more, and usually have container-filling and truck-loading facilities on the premises. [11-15-97]
- 7.16 “Distributing point” means a facility other than a distributing plant which normally receives gas by tank truck and which fills small containers or the engine fuel tank of motor vehicles on the premises. (An LP gas service station is one type of distributing point). [11-15-97]

- 7.17 “Division” means the construction industries division of the regulation and licensing department. [11-15-97]
- 7.18 “Energy efficient water heater” means any LP gas automatic storage water heater that meets or exceeds ASHREA 90-75 standards for energy efficiency. [11-15-97]
- 7.19 “Fuel gas piping system” means the arrangement of piping, tubing, fittings, connectors, valves and devices designed and intended to supply or control the flow of fuel gas to the appliances. [11-15-97]
- 7.20 “Gas company” means any LP gas company or LP gas distributor. [11-15-97]
- 7.21 “Gas supply **connection**” means the terminal end or connection to which a gas supply connector is attached. [11-15-97]
- 7.22 “Gas supply connector” means tubing or piping connecting the mobile home to the gas supply source. [11-15-97]
- 7.23 “Gas vents” means factory-built vent piping and vent fittings listed by an approved testing agency, that are assembled and used in accordance with the terms of their listings, for conveying flue gases to the outside atmosphere. [11-15-97]
- 7.24 “Heat producing appliance” means all heating and cooking appliances and all fuel burning appliances. [11-15-97]
- 7.25 “Heating appliance” means an appliance for comfort heating or for water heating of a manufactured home. [11-15-97]
- 7.26 “House piping” means the LP gas piping from the point where it enters the building or foundation, up to and including the outlets. [11-15-97]
- 7.27 “Input rating” means the LP gas-burning capacity of an appliance in BTU’s per hour as specified by the manufacturer. [11-15-97]
- 7.28 “Inspector” means a person hired by the Bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry and the enforcement of the codes used in CNG, LNG and LCNG in motor vehicles. [11-15-97]
- 7.29 “Labeled” means equipment or materials to which has been attached a label, symbol or other identifying mark of an organization acceptable to the “authority having

jurisdiction” and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicate compliance with appropriate standards or performance in specified manner. [11-15-97]

- 7.30 “Liquefied Natural Gases”, “Liquefied Compressed Natural Gases”, “**LNG**” and “**LCNG**” means a fluid in the liquid state composed predominantly of methane and that can contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas. [11-15-97]
- 7.31 ““Liquefied Petroleum Gases”, “**LPG**” and “**LP Gas**” means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or **ISO-butane**) and butylenes. [11-15-97]
- 7.32 “Liquid transfer” means the transfer of **LP** gas in a liquid form from an approved container into another approved container. [11-15-97]
- 7.33 “Liquid withdrawal” means an approved **LP** gas container designed for the withdrawal of **LP** gas for utilization in an approved means. [11-15-97]
- 7.34 “Listed” means equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner. [11-15-97]
- 7.35 “**LP** gas installation” means the installation of materials, fixtures, appliances or equipment that utilize **LP** gas, which is installed by a licensee of the **LP** Gas Bureau. [11-15-97]
- 7.36 “Manufactured homes” means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one internal unit, as well as a single unit. Manufactured homes do not include recreational vehicles or modular or pre-manufactured homes, built to Uniform Building Code standards, designed to be permanently affixed to real property. [11-15-97]

- 7.37 “Manufactured home site” means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants. [11-15-97]
- 7.38 “Manufactured home park” means a parcel (or contiguous parcels) of land which has been so designated and improved so that it contains two or more manufactured home sites available to the general public for the placement thereon of manufactured homes for occupancy. [11-15-97]
- 7.39 “Outlet” means a threaded connection or bolted flange in a pipe system to which an LP gas-burning appliance is or may be attached; such outlet must be located in the room or space where the appliance is or may be installed. [11-15-97]
- 7.40 “Point of delivery” means the initial junction of the consumer’s gas piping with the gas company’s piping, at the outlet side of the first regulator, regardless of whether it is a single-stage regulator system or the first stage regulator of a two-stage regulator system. [11-15-97]
- 7.41 “Product” or “Products” of liquefied petroleum gases, compressed natural gases or liquefied natural gas are considered to be liquefied petroleum gases or compressed natural gases or liquefied natural gases respectively. [11-15-97]
- 7.42 “Qualified instructor” means an employee who has passed the required examination and performed for at least one year the work being taught. [11-15-97]
- 7.43 “Readily accessible” means having direct access without the necessity of removing any panel, door or similar obstruction. [11-15-97]
- 7.44 “Regulator” means a device for controlling and maintaining a uniform pressure to the manifold of gas equipment. [11-15-97]
- 7.45 “Riser” means that portion of the yardline, which protrudes through the grade level of the ground. [11-15-97]
- 7.46 “Roof jack” that portion of venting system, including the cap, insulating means, flashing and ceiling plate, located in and above the roof [11-15-97]
- 7.47 “Sealed combustion/direct vent system appliance”, “Direct Vent System Appliance” means an appliance which by its inherent design is constructed so that all air supplied for combustion to the combustion system of the appliance, and all products of combustion are completely isolated from the atmosphere of the space in which it is installed, and all flue gases are discharged to the outside. [11-15-97]

7.48 ‘Yardline’ means a buried line servicing utilities from the on-site utility terminal to the manufactured home. [11-15-97]

8. RETROACTIVITY:

The provisions of the codes are not intended to prevent the use of any material, method of construction, or installation procedure not specifically prescribed by the codes, provided any such use is preapproved, in writing, by the LP Gas Bureau. The provisions of the codes are considered necessary to provide a reasonable level of protection from loss of life and property. Unless otherwise stated, the provisions of the codes shall not be applied retroactively to existing facilities, equipment, appliances, structures, or systems that were in compliance with the provisions of the codes in effect at the time of installation, or approved for construction or installation prior to the effective date of the document, except in those cases where it is determined, in writing, by the LP Gas Bureau that the existing situation involves a distinct hazard to life or adjacent property. Equipment and appliances include stocks in manufacturers’ storage, distribution warehouses, and dealers’ storage and showrooms in compliance with the provisions of the codes in effect at the time of manufacture. [11-15-97]

9. EXAMINATION:

No licensee or employee of a licensee shall install or modify any appliance or piping system until he has proved his knowledge of acceptable minimum standards by passing an examination required by the Bureau. [11-15-97]

9.1 All personnel whose duties require that they transport or dispense LP Gas shall prove by passing an examination, as required by the Bureau, that they are familiar with minimum safety standards and practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination by the Bureau. [11-15-97]

9.2 An identification card shall be issued to each person who passes the examination required by the LP Gas Bureau. The identification card shall contain pertinent information such as examinee’s name, address and classification(s) for which examinee is certified, and may also provide space for listing violations of the LP Gas Act. [11-15-97]

9.3 No licensee or employee shall perform the work he has examined for until he has received an identification card for that classification from the Bureau. [11-15-97]

9.4 An identification card shall only be valid while employed by a licensee. The identification card shall be renewed annually with payment of a reasonable fee to the

Bureau on the anniversary date of the employer's license. The renewal fee shall be paid with the licensee's renewal for all listed qualifying parties. [11-15-97]

- 9.5** An identification card holder not employed by a licensee for a period of two (2) years shall retest before being qualified. [11-15-97]

10. ANNUAL INSPECTIONS:

- 10.1** There shall be an annual safety inspection, made by an inspector of the Bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection. [1 1- 15-97]

- 10.2** Own use non-resale dispensers shall not require annual inspection. These facilities shall be inspected at the time of installation or modification. [1 1- 15-97]

11. LP GAS PLANS AND SPECIFICATIONS:

- 11.1** Before equipment for the transfer of liquid LP gas may be installed, plans and specifications of the proposed installation must be submitted in TRIPLICATE to the Bureau for approval. Written approval must be received before the equipment is installed. [11-15-97]

- 11.2** Plans for proposed location of retail cylinder exchange shall be submitted to the LP Gas Bureau. Written approval must be received before the equipment is installed. [11-15-97]

12. INSURANCE:

- 12.1** Licensees holding LP Gas classifications LP-1 , LP-3S, LP-4, LP-5, LP-6, LP-10, CNG-1 and LNG-1 with only vehicles of 3,500 gallons water capacity or less shall have combined single-limit public liability insurance or a corporate surety bond in at least the minimum of \$500,000. [1 1-1 5-97]

- 12.2** Licensees holding LP Gas classification LP-7 or LP-9 shall have combined single-limit public liability insurance or a corporate surety bond in at least the minimum amount of \$100,000. [11-15-97]

13. LP GAS MISCELLANEOUS:

- 13.1** Any accident/incident where LP Gas in any form or any application may have been a factor or could become a contributing factor shall be reported immediately to the LP Gas Bureau. Likewise, any accident/incident where any CNG or LNG- powered vehicle may have been a factor or could become a contributing factor shall be reported immediately to the LP Gas Bureau. [11-15-97]
- 13.2** In all cases where a disconnection is made, a notice shall be given to the consumer by the inspector. Such notice shall state that the same has been disconnected by, or on order of, the inspector, together with the reasons therefor. It shall be unlawful for any person other than a licensed installer to reconnect or use any segment of the installation without authorization of an inspector. [11-15-97]
- 13.3** No delivery of LP Gas shall be made into any transportation unit or bulk plant after notice that either the current decal or the license has been suspended or revoked, or the license has expired. [11-15-97]
- 13.4** The Bureau will make available to the industry a compliant form to be used to report any violation of the LP Gas Act, Rules and Regulations or Code. This form shall be submitted to the Bureau, at which time the Bureau will investigate and furnish a written report back to the complainant with twenty (20) working days, with violations found and action taken. [11-15-97]

14. PRINTED FORMS, PERMITS AND FEES:

- 14.1** Printed forms as prescribed by the Division shall be used for application for license, licenses, receipts, approvals, disapproval's, installation records, inspection reports and any other purposes for which the Bureau may consider standardized forms necessary for expediency. [11-15-97]
- 14.2** An administrative penalty may be assessed to anyone found to be making intentional false reports or for failure to file any written report or form as required by law. [11-15-97]
- 14.3** Printed forms listed below by number or name are hereby adopted and their use for the purpose stated: [11-15-97]

14.3.A FORM 1. Records of Installation, Test or Modification. \$15.00

To be used to record the following:

1. Installation of **LP** Gas containers. Containers of 239#WC or less shall be exempt from this requirement.
2. Installation of piping and appliances. Form 1 shall be prepared at time work is performed and held at licensee's location until called for by Bureau inspector.

[11-15-97]

14.3.B Annual, Alternative Fuel Installation Registration Form. CID will attach this Form to annual license renewal. License will not be renewed until the completed form is submitted to CID. [11-15-97]

14.3.C LP Gas Visual Cargo Tank and Equipment Inspection Form. **\$37.50**

(Shall not be assessed more than one time in each 12 month period)

Re-inspection of Cargo Tank and Equipment and additional charge for **re-inspection.** **\$37.50**

Licensee must obtain Form prior to inspection of vehicle or placing a new vehicle in service. Bureau inspector will complete Form upon inspection. Corrections after inspection will require a Correction Form and re-inspection. To expedite inspections, vehicle licensee will be notified by the LP Gas Bureau that vehicle annual inspection is due during the first month of the inspection quarter. [11-15-97]

14.3.D Plant/Dispenser Inspection Form. **\$37.50**

(Shall not be assessed more than one time in each 12 month period)

Re-inspection of bulk storage and additional charge for **re-inspection.** **\$37.50**

Licensee must obtain Form prior to inspection of plant or placing a new dispenser in service. LP Gas Bureau inspector will complete Form upon inspection. Corrections after inspection will require a Correction Form and re-inspection. To expedite inspections, dispenser licensee will be notified by the Bureau that dispenser annual inspection is due during the first month of the inspection quarter. [11-15-97]

14.3.E Correction Inspection Form.

LP Gas Bureau inspector will issue Form when correction is needed and note the code, statute or rule and regulation section number that was in violation. Bureau inspector may lock and seal filler valve until correction is completed. After correction, licensee will sign Correction Form, attach appropriate new inspection form (listed above), and return forms, seal and filler valve lock to inspector for **re-inspection**. [11-15-97]

14.3.F FORM **26C-26D** or Accord Form. Certificate of Insurance.
To be submitted by all licensees to the LP Gas Bureau.
[11-15-97]

14.3.G Form 1 first **re-inspection** fee shall be **\$15.00**
[11-15-97]

14.3.H Form 1 second **re-inspection** fee shall be **\$75.00**
[11-15-97]

15. LICENSE CLASSIFICATIONS, SCOPES AND FEES:

License classifications are defined and annual license fees are set as follows:
[11-15-97]

15.1 LP-1 Wholesale sale or delivery of LP Gas **\$125.00**

A Licensee under this **classification** is authorized to wholesale, transport and/or deliver gas in vehicular units into or out of any location except that of an ultimate consumer. This classification will allow delivery to the ultimate consumer whose facilities require a bulkhead. [11-15-97]

15.2 LP-3S Retail sale of LP Gas **\$65.00**

A licensee under this classification is authorized to deliver, transfer and transport LP gas in a liquid state to the ultimate consumer, both intrastate and interstate. The company employing the LP-3S licensee must also hold an LP-5 License in order to hold and LP-3S License. A person holding this classification is authorized to perform all work as described in classifications LP-1 and LP-9. [11-15-97]

15.3 LP-4 Limited Installation, Service and Repair \$125.00

A licensee under this classification is authorized to install, service and repair appliances, equipment, and piping for use with LP Gas in residences and commercial buildings except mobile homes (as defined by the Manufactured Housing Act) recreational vehicles and similar units. The scope of the work for the LP piping is from (point of delivery) to the final connection of the appliances. In order to qualify for this classification, a licensee must hold mechanical license classification MM2 or MM98. [11-15-97]

15.4 LP-5 Installation, Service and Repair \$125.00

A licensee under this classification is authorized to install or erect liquid transfer facilities; and to install, service and repair appliances, equipment and piping for use with LP gas in residences and commercial buildings except mobile homes (as defined by the Manufactured Housing Act), recreational vehicles and similar units. The scope of the work for the LP gas appliances in this classification does not include the HVAC ductwork or hydronic piping systems connected to any appliance. Those specialties fall under the Mechanical license classifications. [11-15-97]

15.5 LP-6 Installation, Service and Repair of mobile units only \$75.00

A licensee under this classification is authorized to install, service and repair LP gas appliances, equipment and piping in manufactured housing, travel trailers, recreational vehicles, campers and similar units. [11-15-97]

15.6 LP-7 Wholesale or manufacture of appliances, equipment or containers \$50.00

A licensee under this classification is authorized to wholesale or manufacture appliances, equipment or containers for use with LP gas. [11-15-97]

15.7 LP-8 Manufacturer of LP Gas \$125.00

A licensee under this classification is authorized to manufacture LP gas, including delivery from storage tanks of the manufacturer. [11-15-97]

15.8 LP-9 Station for dispensing LP Gas \$35.00

A licensee under this classification is authorized to dispense LP gas into fuel containers on vehicles or to fill and/or deliver portable containers (maximum water

capacity 239#). [11-15-97]

- 15.9 LP-10 LP Gas carburetion** sales, service and installation,
including repair **\$35.00**

A licensee under this classification is authorized for LP gas carburetion sale, service and installation, including repair. [11-15-97]

- 15.10 CNG-1 CNG carburetion** sale, service and installation **\$35.00**

A licensee under this classification is authorized for CNG gas carburetion sale, service and installation, including repair. [11-15-97]

- 15.11 LNG-1 LNG carburetion** sale, service and installation **\$35.00**
[11-15-97]

- 15.12** Annual renewal fee per qualifying party identification card **\$10.00**
[11-15-97]

- 15.13** Licensing examination fee **\$25.00**
[11-15-97]

- 15.14** Licensing reexamination fee **\$25.00**
[11-15-97]

- 15.15** The total license fee charged any one licensee for a combination
of LP gas activities at any one operating location is set at: **\$300.00**
[11-15-97]

16. MOTOR FUEL AND PERMANENT MOUNTED TANK REFUELING:

1. Stop all internal combustion engines on vehicles to be serviced.
2. No smoking or open fires.
3. Shut off all pilot lights.
4. Remove all passengers from vehicle.
5. Do not fill past maximum filling capacities.

6. Do not start vehicle until fill connections have separated.
7. Do not relight pilots while in dispensing area.

[11-15-97]

17 SELF SERVICE LP GAS DISPENSERS:

- 17.1** Self-service dispensers shall be used to dispense LP gas for motor/mobile fuel only. Only ASME constructed motor/mobile fuel type containers that are permanently secured to a vehicle, that incorporate an 80% stop fill device and ASME constructed stack type containers permanently secured to a vehicle shall be filled. The filling of farm carts, moveable fuel storage tenders and DOT cylinders is prohibited. The filling of hot air balloon fuel cells approved by the Federal Aviation Administration will be allowed. The authority having jurisdiction may grant exceptions to allow potentially non-trained people to use self serve dispensers if the dispenser is user-friendly with safe dispenser nozzles. [11-15-97]
- 17.2** All self-service LP dispensers shall comply with the currently adopted version of NFPA 58, Sections: Vehicle Fuel Dispenser and Dispensing Stations and Installation of Vehicle Fuel Dispensers. [11-15-97]
- 17.3** The main liquid valve(s) opening and closing devices shall be installed so that the valve(s) are in the closed position when the transfer operation is not in use. [11-15-97]
- 17.4** Self-service LP dispensers shall be equipped with a device(s) for emergency shutdown of LP gas and power, from a location remote from the dispensing and storage areas. The device(s) shall operate to activate the valve(s) installed so as to shut off the power and gas supply to the dispenser(s). The emergency shutdown device(s) shall be distinctly marked for easy recognition. [11-15-97]
- 17.5** In the event the self service dispenser is located in an area remote from the storage container, an excess flow, or approved shearing device, shall be installed in the piping where it emerges from the ground under the cabinet and be installed so as to ensure that shearing of the piping will occur on the downstream side of the excess flow or shearing device. [11-15-97]
- 17.6** All hoses used for transfer operation on self service dispensers shall incorporate an approved breakaway (pull -away) device and shall be installed in accordance with the manufacturer's instructions. [11-15-97]

- 17.7** Appropriate step by step operating instructions shall be posted at or on each dispenser, and shall be readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the dispenser. [11-15-97]

18. PIPING AND APPLIANCES WITHIN BUILDINGS:

- 18.1** All piping and LP appliances must meet current NFPA 54 and NFPA 58 requirements, with the exception that anodeless flexible risers may be used at the tank and at the house. Areas containing below grade piping or appliances must be adequately ventilated. Ventilation openings shall be a minimum of 36 square inches. [11-15-97]
- 18.2** Gas utilization equipment located in confined spaces shall be provided with two permanent openings, one commencing within 12 inches of the top, and one commencing within 12 inches of the bottom of the enclosure. [11-15-97]

19. BLACK PIPE UNDERGROUND:

- 19.1** If an LP Gas dealer makes changes to an installation with black pipe (even a tank change), the consumer/owner has 12 months to replace the black pipe if the following conditions are met:
- 1.** Black piping underground must have otherwise been installed per code.
 - A.** Proper size.
 - B.** Proper depth.
 - C.** Must break ground before entering building or skirting of Mobile Homes.
 - 2.** Piping shall hold pressure test as per NFPA 54 - 1 ½ times proposed working pressure.
 - 3.** The black piping underground shall not be repaired, added to, or altered in any manner.
 - 4.** A portion of the horizontal buried line shall be exposed completely around, and examined for corrosion. If excessive corrosion is present, the piping shall be replaced before service is continued.

[11-15-97]

19.2 The LP Gas consumer/owner shall be warned in writing of the potential hazard of the unprotected buried piping in their system. Consumer/owner shall sign warning and a copy shall be attached to the Form 1 permit and given to the inspector. The Inspector will turn this warning, along with completed permit, into the LP Gas Bureau to be kept on file. Inspector will note on completed permits that the system contains unprotected buried pipe. This file will be maintained and during the eleventh (11 th) month after the change out, if the piping has not been changed out and a Form 1 submitted, a notice will be sent to the gas supplier, consumer/owner, and Inspector: notifying them that the one year time limit for replacement is almost over. If piping isn't replaced by the deadline, the system will be put out of service. This procedure will be in effect until July 1, 2000, at which time black piping underground shall not be allowed. [11-15-97]

20. LEAK TESTING:

Leak testing devices, such as the Ferrellmeter, are approved for use in New Mexico. [11- 15-97]

21. MOVEMENT OF LP GAS CONTAINERS AT COMMERCIAL INDUSTRIAL SITES OR SCHOOLS:

21.1 At commercial sites, industrial sites or schools no person shall move an LP gas container(s) belonging to another unless such movement is required on an emergency basis to prevent loss of life or property or the spread of fire or as required to eliminate a safety hazard. [11-15-97]

21.2 This regulation shall not govern situations where it is ordered by any police or fire officials in their performance of their official duties. [11-15-97]

21.3 If an emergency move is made, the LP Gas Bureau shall be notified by telephone within 12 hours of said move and a written explanation shall be mailed to the LP Gas Bureau within 24 hours of said move as evidenced by the postmark. [11-15-97]

21.4 Movement of LP gas containers may be made by persons other than the owner ten days after giving written request to the owner, as evidenced by return receipt at his last known address. [11-15-97]

21.5 Containers moved shall be set securely on a stable base as to prevent danger or damage to the container and/or appurtenances by slipping, falling or rollover. All openings shall be secured so as to prevent release of gas in either liquid or vapor form. [11-15-97]

22. CONTAINERS AND INSTALLATIONS:

22.1 Safe Installation.

No LP gas container shall be filled or LP gas system used that does not meet the requirements of NFPA 58, NFPA 54 or this document. [11-15-97]

22.2 Chart 1 (all services except cargo tanks)

ASME 1949 and earlier and U-68 and U-69 Codes are approved for all LP gas service, except cargo tank, regardless of installation date, with the following working pressures and relief valve settings, when using propane grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	Yes	Yes	Yes	Yes
Relief Valve Setting (%)	100	137	165	192	220	247	275	110%
	to	to	to	to	to	to	to	to
	125	156	187	218	250	281	317	125%

[11-15-97]

22.3 Chart 2 (bulk service)

API-ASME Code, ASME U-201, 1950 and 1952 or later ASME Codes are approved for bulk plant use*, and for all other container use if manufactured after June 30, 1959, in accordance with ASME Code, at the time of manufacture with the following working pressures and relief settings, when using propane of grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	100				220	88%		
	to				to	to		
	125				250	100%		

*Cargo containers shall have a minimum working pressure of **250** PSI.

[11-15-97]

22.4 Chart 3 (domestic tank service)

API-ASME Code, ASME U-200, U-201, 1950 and 1952 or later ASME Codes, if installed in New Mexico before June 30, 1959, may be moved from one place to another within the state, but not brought into the state, are approved for domestic tank service with the following working pressures and relief settings, when using propane of grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	110	132	154	176	198	220	88%	
	to	to	to	to	to	to	to	
	125	150	175	200	225	250	100%	

[11-15-97]

22.5 Container protection. Where physical damage to LP Gas containers, or systems of which they are a part, from vehicles is a possibility, precautions shall be taken against such damage. [11-15-97]

22.5.A Container protection shall be crash post or other protection acceptable to the LP Gas Bureau. [11-15-97]

22.5.B When crash post are used they shall be a minimum of 2 7/8 inch outside diameter, with 3 feet above ground, 2 feet below ground, embedded in concrete, filled with concrete, and spaced 4 feet apart. The spacing may be extended to 8 feet between post if a minimum 2-inch welded top rail is installed. [11-15-97]

22.6 Container Markings.

All LP gas tanks owned by LP gas dealers must be marked with the name and emergency phone number of the LP gas dealer. An answering machine with emergency phone numbers shall qualify as "means acceptable" in NFPA 58. These emergency numbers must include the number of someone from the propane company who is able to respond (a telephone response is acceptable). This regulation does not apply to customer owned tanks. [11-15-97]

22.7 Container Screening.

Screens for all LP gas above ground containers shall be installed in the following manner. [11-15-97]

- 22.7.A** Screening material shall be non-combustible if container is screened on three sides. If solid screening is used, each wall up to 20 feet in length shall be provided with at least one opening, with an additional opening for each 20 feet of length or fraction thereof. Each opening shall have a minimum size of 50 square inches, the bottom of which shall not be more than 6 inches above the ground. [11-15-97]
- 22.7.B** If the screen encloses two sides or no more than 50%, a wood fence may be used. [11-15-97]
- 22.7.C** The screen shall enclose no more than three sides of the container. [11-15-97]
- 22.7.D** There shall be a minimum clearance of three feet from the container to the screen. [11-15-97]
- 22.7.E** The screen shall not exceed the height of the container by more than one foot. [11-15-97]
- 22.7.F** Covers or tops shall not be installed over containers. [11-15-97]
- 22.7.G** All tanks on school grounds, church grounds, playgrounds, etc. shall be fenced. Any request for exemption to, or deviation from, the fencing requirement shall be made in writing to the Bureau. If, upon investigation of a particular proposed tank installation, the inspector and Bureau Chief determine it is not necessary, a fence shall not be required. [11-15-97]

23. LP GAS INSTALLATIONS AT SPECIAL EVENTS:

23.1 Containers:

All containers must be located outside the booth, the building, or the enclosure. All containers must be secured in a position (usually in an upright position) so that vapor only will be present at the vapor service valve. The secured container's device, such as a chain, must be able to support the weight of the container plus the container's contents. All containers must be approved LP gas container. Any DOT cylinder for

LP gas must be marked with the re-qualification date(s) if the container is more than twelve years old. All containers must be leak-free. Any LP gas container showing excessive rust, corrosion, pitting, or denting shall not be used. The bottom of each container shall be checked for these conditions. All portable DOT cylinders must have a fixed “warning” label that includes information on the potential hazards of LP gas. Outlets for all unused containers shall be capped or plugged. The vapor service valve must be sealed when the container is not in use. (Example: A p.o.l. plug installed in the open vapor outlet.) A quick-closing coupling approved for use on LP gas containers may be used in lieu of the sealing cap or plug. When a container’s water capacity is greater than 239 pounds (nominal 100 lb.) An LP gas permit must be obtained before using such container. [11-15-97]

23.2 Hoses:

The only hoses that shall be used are those approved for use with LP gas. The hose end couplings must be installed as recommended by the hose manufacturer. (Unacceptable: an automotive screw-type clamp installed on the end of the hose.) All hoses must be leak-free. All hoses must be kept out of the way of foot and vehicular traffic. [11-15-97]

23.3 Appliances:

All appliances used in food booths must have an accessible shut-off valve near the appliance that can be easily closed in case of an emergency. Only appliances that are leak-free and approved for the use of LP gas shall be used. [11-15-97]

23.4 Filling of Containers:

The filling of LP gas containers on site shall be done in a designated area separated from the general public or at times when the visitation of the general public is minimal. Nylon jackets, cigarette lighters, strikers, and/or matches are **not** allowed in the filling area. [11-15-97]

23.5 Leak Test:

A leak test shall be performed each day before the food booth is opened for business, any time a cylinder is exchanged, and any time the LP gas system is modified. Soap (without ammonia) mixed with water or a combustion gas hand-held electronic leak detector can be used for detection of leaks. The entire system must be free of leaks. [11-15-97]

24. MANUFACTURED HOMES:

24.1 Exterior Gas Piping.

24.1.A Location of Containers, Containers and Underground Piping.

- 1.** Containers, appurtenances and underground piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.
- 2.** Underground gas piping shall not be installed under any manufactured home or any attachments to the manufactured home. This is an exception to NFPA 54.

[11-15-97]

24.1.B All gas piping beneath a manufactured home shall be adequately supported by galvanized, or equivalently protective metal straps or hangers at least every four (4) feet, except, where adequate support and protection is provided by structural members. [11-15-97]

24.1.C Gas shut-off valves shall not be placed beneath a manufactured home. [11-15-97]

24.1.D Any extensions or alterations made to the gas piping system for the purpose of establishing the supply inlet for connection to the riser may not reduce or restrict the gas piping size from that of the original inlet. [11-15-97]

24.1.E There shall be only one point of crossover between the section of a multi wide manufactured home, which must be readily accessible from the outside. [11-15-97]

24.1.F Unless otherwise approved by the Bureau the connector used for the crossover on multi wide manufactured homes when gas is supplied to more than one (1) section, must be made by a listed "Quick Disconnect" device which shall be designed to provide a positive seal of the supply side of the gas system when such device is separated. (Refer to Exhibit #1) [11-15-97]

24.1.G The crossover connection shall be of the same size as the piping with which it directly connects. [11-15-97]

24.1.H The gas inlet on the manufactured home shall protrude no more than six (6) inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six (6) inches of the point where it enters beneath the manufactured home. [11-15-97]

24.1.I Bond of Gas Piping:

1. Gas piping shall not be used as an electrical ground.
2. Gas piping shall be bonded. Metallic gas piping shall be considered bonded if it is connected to the terminal on the chassis of the manufactured home by clamps, solderless connectors or by suitable ground-type straps.

[11-15-97]

24.1.J Location of Riser.

The gas riser shall be located within twelve (12) inches of the manufactured home. [11-15-97]

24.1.K Site Connector.

Each manufactured home utilizing gas shall be connected to the manufactured home site outlet by an approved mobile home connector not more than thirty-six (36) inches in length. If encased flexible polyethylene pipe is used, a flexible connector shall not be required. The above ground portion of the polyethylene flexible riser shall not exceed thirty-six (36) inches in length and be installed so as to maintain flexibility and compensate for expansion and contraction. [11-15-97]

24.1.L Mechanical Protection.

All gas outlet risers, regulators, meters, valves or other exposed equipment shall be protected from mechanical damage by vehicles or other causes. Meters shall not be supported by gas service piping. Regulators may be supported by the rigid extended piping of the manufactured home. [11-15-97]

24.1.M Maximum Pressure Permitted.

Gas supplied into the manufactured home shall not exceed ½ pounds per square inch gauge or fourteen (14) inches water column. [11-15-97]

24.1.N Gas Pipe Sizing.

Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from any gas supply connections, when all appliances are in operation at maximum capacity, is no more than 0.5 inch water column. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with the current National Fuel Gas Code, NFPA 54. [11-15-97]

24.2 Interior Gas Piping:

24.2.A Interior gas piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58. [11-15-97]

24.2.B Gas-Fired Appliances.

Each gas-fired appliance must have a listed shut-off valve located within three (3) feet of the appliance and located in the same room as the gas appliance. [11-15-97]

24.2.C Appliance Connectors.

Appliance connectors shall not exceed three (3) feet in length, except for range connectors, which shall not exceed six (6) feet in length. [11-15-97]

24.2.D Inspection Testing and Purging.

Inspection testing and purging shall comply with the currently adopted edition of NFPA 54. [11-15-97]

24.3. Heat Producing Appliances.

Every heat-producing appliance used in manufactured homes shall be listed or certified by an approved nationally recognized testing agency for this application. [11-15-97]

24.3.A Fuel Conversion.

Fuel burning appliances shall not be converted from one fuel to another unless converted in accordance with the terms of its listing. [11-15-97]

24.3.B Venting.

Fuel burning, heating and refrigeration appliances shall be of the vented type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the manufactured home.

1. Fuel burning heat-producing appliances, except ranges, gas dryers and ovens, shall have complete separation of the combustion system from the atmosphere of the manufactured home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.
2. Vents, roofjacks and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.
3. Vent terminations shall not be less than three (3) feet from any motor driven air intake that opens into habitable areas.
4. Every joint of any vent or vent connector shall be secure, rigid, and tight, in alignment and have approved design and workmanship. Vent connectors shall be firmly attached to draft hood outlets or flue collars by sheet metal screws or other approved means, or the vent connectors using listed TYPE B or TYPE L gas vent materials shall be securely assembled using the method shown in the manufacturer's instructions.

[11-15-97]

24.3.C Gas Clothes Dryers.

1. Clothes dryers shall not be installed in a room intended to be used for sleeping purposes.
2. Clothes dryers shall be exhausted to the outside air by a moisture lint

exhaust duct and terminating fitting listed or certified as components of the appliance.

3. A clothes dryer moisture lint exhaust duct shall not be connected to any furnace duct, gas vent or chimney.
4. The moisture lint exhaust duct shall not terminate beneath the manufactured home.
5. Moisture lint exhaust ducts shall not be connected with sheet metal screws or other fastening devices, which extend into the duct.

[11-15-97]

24.3.D Installation.

The installation of each heat producing appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall leave the manufacturer's instructions attached to the appliance. Every appliance **shall** be secured in place to avoid displacement and movement **from** vibration and road shock..

1. Instructions.

Instruction operating instructions **shall** be provided with the appliance.

2. Marking.

Information on clearances, input ratings, lighting and shutdown shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed. Each fuel-burning appliance shall bear a permanent marking designating the type(s) of fuel for which it is listed.

3. Accessibility.

Every appliance shall be accessible for inspection, service, repair and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control and ignition means while starting the appliance.

[11-15-97]

24.3.E Location.

Heat producing appliances shall be so located that no doors, drapes or other such material can be placed or swung closer to the front of the appliance than the clearances specified on the labeled appliances. [11-15-97]

24.3.F Clearances.

Clearances between heat producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified. [11-15-97]

24.4. Cross Ventilation:

24.4.A Above Ground Installation.

1. Manufactured homes from 32' to 52' in length shall have one (1) vent of at least 36 square inches on all exposed sides of underfloor area. Vents must be located diagonally across from each other.
2. Manufactured homes from 53' to 80' in length shall have a minimum of two (2) vents of at least 36 square inches on exposed sides of the underfloor areas. Vents must be located diagonally across from each other.
3. The ends of the Manufactured home are not considered sides for determining cross ventilation.

[11-15-97]

24.4.B Ground Level Installation. (Refer to Exhibit #2)

1. Manufactured homes from 32' to 52' in length must have a minimum of 36 square inches of venting on the curbside and roadside of the manufactured home. Vents must be located diagonally across from each other.
2. Manufactured homes from 52' to 80' in length must have a minimum

of two 36 square inches of venting on the roadside and curbside of the manufactured home. Vents must be located diagonally across from each other.

3. Each end of the unit must have a minimum of at least 36 square inches of venting so the air flow will be directed to ground level under the unit.
4. All multi-sectioned manufactured homes shall be vented as per the above requirement doubling the number of vents per side of the unit. All vents shall be installed in a way not to allow any rodents or direct rainfall to enter the home.

[11-15-97]

24.5 Manufactured Home Parks:

24.5.A Fuel Gas Equipment and Installation.

Fuel gas equipment and installations installed within a building in a manufactured home park shall comply with the current standard for the Installation of Gas Appliances and Gas Piping (NFPA 54), or the current standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58). [11-15-97]

24.5.B Manufactured Home Park Gas Systems.

Gas equipment and installations within a manufactured home park shall be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction. [11-15-97]

24.5.B.1 Required Gas Supply.

The minimum hourly volume of gas required at each manufactured home lot outlet or any section of the mobile home park has piping system shall be calculated as shown on chart IV.

CHART IV-Demand Factors for use in Calculating Gas Piping Systems
in Manufactured Home Parks.

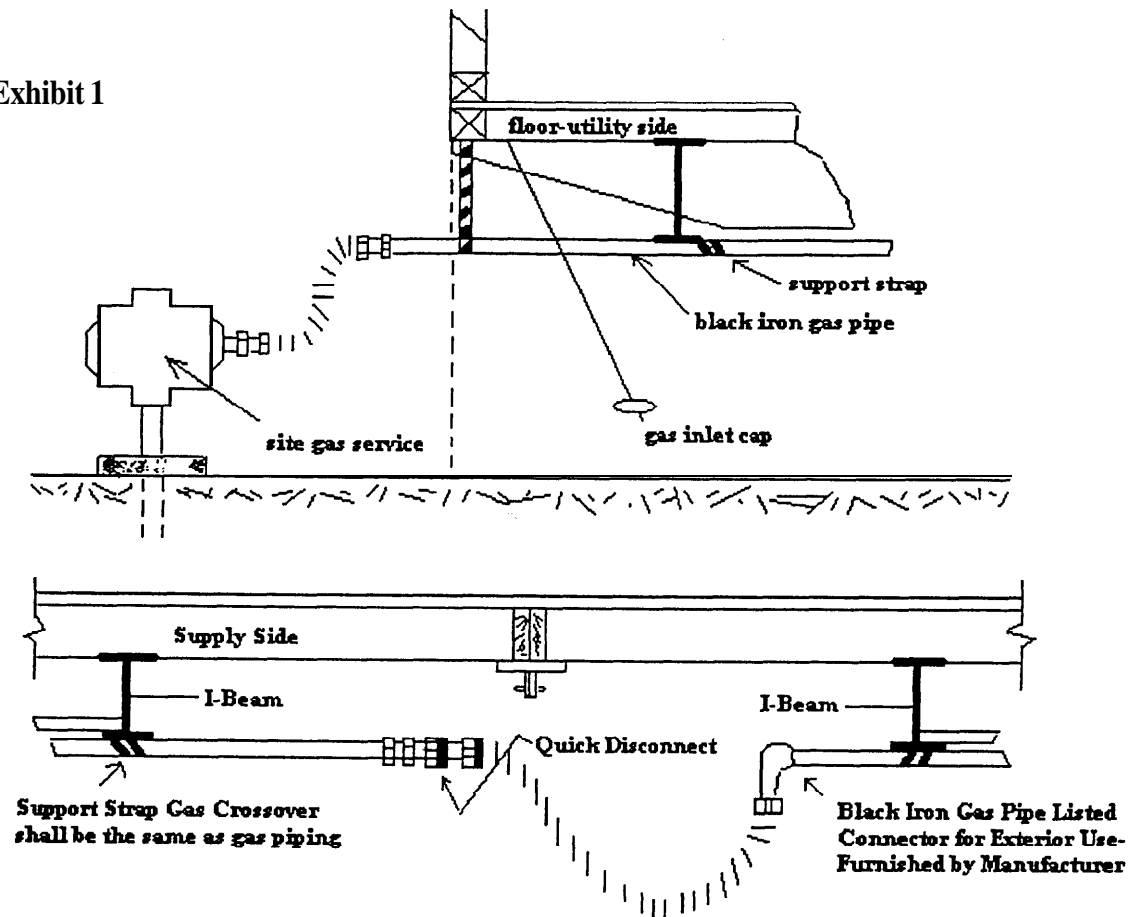
No. Of Manufactured Home Sites	BTU Per Hour Per Mfg. Home Site
1	125,000
2	117,000
3	104,000
4	96,000
5	92,000
6	87,000
7	83,000
8	81,000
9	79,000
10	77,000
11 to 20	66,000
21 to 30	62,000
31 to 40	58,000
41 to 60	55,000
Over 60	50,000

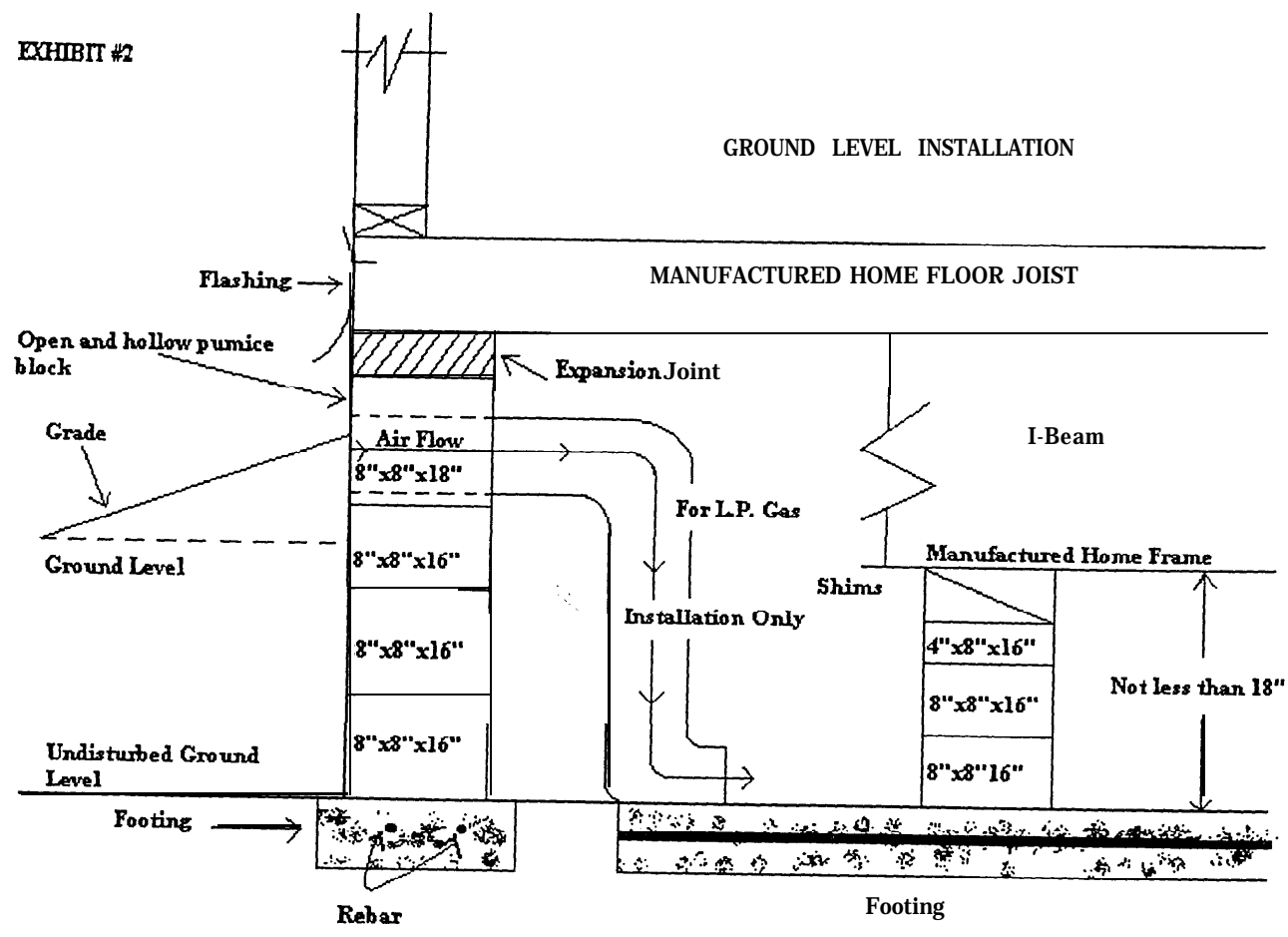
[11-15-97]

24.5.B.2 Lot Shutoff Valve.

On systems supplied from a central container, each manufactured home lot shall have an approved gas shutoff valve installed upstream of the mobile home lot gas outlet and located on the outlet riser at a height of not less than four (4) inches above grade. Such valve shall not be located under any manufactured home. Whenever the manufactured home lot outlet is not in use, the outlet shall be equipped with an approved cap or plug to prevent accidental discharge of gas. [11-15-97]

Exhibit 1





ARTICLE 5
LIQUEFIED AND COMPRESSED GASSES
70-5-1. THROUGH 70-5-23.
NMSA 1978

ARTICLE 5
LIQUEFIED AND COMPRESSED GASSES
70-5-1. THROUGH 70-5-23.

70-5-1. Definitions.

As used in the LPG and CNG Act [this article]:

- A. **“liquefied petroleum gases”**, "LPG" and "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butanes (normal butane or iso-butane) and butylenes;
- B. **“compressed natural gases”** and "CNG" means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel;
- C. **“product”** or **“products”** of liquefied petroleum gases or compressed natural gases are considered to be liquefied petroleum gases or compressed natural gases respectively;
- D. **“qualified instructor”** means an employee who has passed the required examination and performed for at least one year the work being taught;
- E. **“inspector”** means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry and the use of CNG in motor vehicles;
- F. **“division”** means the construction industries division of the regulation and licensing department;
- G. **“bureau”** means the liquefied petroleum and compressed gas bureau of the division; and
- H. **“commission”** means the construction industries commission.

70-5-2. Short title.

Chapter 70, Article 5 NMSA 1978 may be cited as the "LPG and CNG Act".

70-5-3. Rules and regulations for design, construction, assembling, equipping and installing of containers and equipment.

All containers and pertinent equipment used or to be used in this state for CNG equipment when attached to motor vehicles or for the storage, transporting or dispensing of LP gases or CNG by industrial, commercial or domestic users, together with appliances used or to be used in this state with LP gases as fuel, shall be designed, constructed, assembled, equipped and installed as specified by the rules and regulations of the commission, adopted and promulgated as provided in the LPG and CNG Act [this article].

70-5-4. Acts concerning LP gas or CNG subject to commission rules and regulations.

The selling, offering for sale, constructing, assembling, repairing, equipping, installing, filling with fuel, storage of fuel within, dispensing of fuel from or transporting fuel within containers described in Section 70-5-3 NMSA 1978 without the containers having been designed, constructed, assembled, equipped, maintained, tested and inspected as specified by the rules and regulations of the commission pursuant to the LPG and CNG Act [this article] shall be a violation of the LPG and CNG Act and shall be subject to the fines, penalties and restrictions provided.

70-5-5. Power to adopt and promulgate rules and regulations; exceptions to act.

- A. The commission may adopt and promulgate rules and regulations as are necessary to carry out the purpose of the LPG and CNG Act [this article] and for the public peace, health and safety as affected by the use of such materials. The regulations made shall substantially conform with the standards as published by the national fire protection association covering the same subject matter. Nothing contained in this section is intended to alter the specifications for manufacturing or testing of containers established by the interstate commerce commission or the U.S. department of transportation or of containers installed in refineries, gas processing plants, underground storage terminals, natural gas distributing plants and pipeline terminals
- B. The bureau may adopt a schedule of reasonable fees to be charged for furnishing any printed matter or forms, for filing or recording any data sheets, blueprints, drawings: plans, specifications, reports and any other instrument or document and for making and furnishing copies of any record, report, regulation, rule, law or any other matter on file with the bureau.

70-5-6. License; exceptions.

- A. No person, firm or corporation shall engage in this state in the manufacturing, assembling, repairing, selling or installing of containers or appliances or of equipment for CNG attached or to be attached to motor vehicles to be used with LP gases as a fuel, nor shall any person, firm or corporation engage in the manufacture, sale, transportation, dispensing or storage of LP gases within this state, except where

stored by the ultimate consumer for consumption only, without having first obtained from the bureau a license to do so for each main and branch office or business operated within the state pursuant to the **LPG** and **CNG** Act [this article]. No license shall be issued until the bureau has determined that the applicant meets all safety requirements provided for in that act and required by the rules and regulations of the commission and the bureau finds that the applicant is fit and able to perform the work for which a license is requested. Provided that household appliances and any other appliance, container or equipment being fed from a reservoir less than five pounds shall not be subject to the **LPG** and **CNG** Act. Provided, further, that retail sale of **LP** gas appliances, including factory installed **LP** gas appliances and equipment on campers, mobile homes and recreational vehicles, shall be exempt from this section.

- B.** When **LP** gas or **CNG** is to be the source of fuel, the installation of piping, appliances and equipment shall be made by installers qualified by the bureau. Property-owner installed systems, when certified by qualified installers or inspectors of the bureau, are exempt from the provisions of this subsection.

70-5-7. Requiring competent employees in transporting, dispensing, installation, service or repair.

- A.** The bureau may require each person, firm or corporation that transports or dispenses **LP** gas or that installs, repairs or services appliances, containers, equipment or piping for the use of **LP** gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission.
- B.** A trainee employee shall be exempt from such examination for a period of forty-five working days and until examined by a representative of the bureau. A trainee employee, during the forty-five day period, shall be under supervision of a qualified instructor. Any **LP** or **CNG** gas licensee hiring a trainee shall, within forty-five days of the commencement of employment, notify the bureau of this fact so that an examination may be scheduled. If the trainee fails to pass the examination, he may retake it after additional instruction.
- C.** The bureau shall set a reasonable fee for administering an examination.

70-5-8. Authority of inspectors.

- A.** An inspector of the bureau may enter any building or proceed on to any premises at any reasonable time in the discharge of his official duties for the purpose of making an inspection of work performed or of testing any installation within the jurisdiction of the bureau.
- B.** An inspector may cause immediate discontinuance of service to any installation or

device, appliance or equipment found to be dangerous to life or property because it is defective, of faulty design, not properly qualified or incorrectly installed, until the installation, device, appliance or equipment is made safe. Any device, appliance or equipment that is dangerous to life or property and cannot be made safe shall be removed by the bureau and properly disposed of.

- C. The inspector shall order the correction of any defects or of any incorrect installation and shall issue a notice to the owner, lessee or renter outlining the corrections to be made in order to meet bureau requirements.
- D. Any authorized representative of the bureau may enter any building or proceed on to any premises for investigation where an accident has occurred in which LP gas may have been a factor. The representative may remove any item which may have been a factor in the accident, and the item shall be retained by the bureau until all questions regarding the accident are resolved.

70-5-9. Annual license fees; inspection fees.

- A. For the purpose of defraying the expenses of administering the laws relating to the use of CNG in motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay to the bureau reasonable license fees as set, classified and defined by the bureau for each operating location. Provided, the total annual fees charged any one licensee for a combination of LP gas activities at one location and subject to licensure under this section shall not exceed three hundred fifty dollars (\$350), and the fee charged for any single activity or operation as set, classified and defined by the bureau shall not exceed one hundred fifty dollars (\$150).
- B. Nothing in the LPG and CNG Act [this article] is intended to alter the jurisdiction of the state corporation commission, pipeline safety department.
- C. In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. The fee shall be set by the bureau and shall not be assessed more frequently than once in each twelve months. The bureau may also charge a reasonable fee for late payment of any fees.
- D. No annual license fee fixed by the bureau as provided in this section shall become effective until after notice to each licensee has been made and hearing held on the proposed annual license fees in the manner provided by Section 70-5-14 NMSA 1978. At the conclusion of any hearing, the bureau shall enter its findings and decision in writing as a regulation, and the regulation shall be filed as provided by the State Rules

Act [Chapter 14, Article 4 NMSA 1978].

70-5-10. Revenue; suspense fund.

All fees and money collected under the provisions of the LPG and CNG Act [this article] shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. The bureau may maintain a "special suspense fund" with the division in an amount of one thousand dollars (\$1,000) budgeted by the bureau for the purpose of making any necessary refunds. The bureau shall, with the advice and consent of the director of the division, employ inspectors, assistants and other necessary help as may be required to carry out its lawful duties.

70-5-11. Proof of responsibility.

- A. The bureau shall require each licensee to have combined single limit public liability insurance of a reasonable amount determined by the commission. Such coverage shall be filed on a certificate to be prescribed by the commission, and the coverage shall be effective until canceled by either the carrier or the licensee. The provisions of this subsection do not apply to manufacturers of LP gas.
- B. The licensee may file as an alternative to insurance described in Subsection A of this section a corporate surety bond of a reasonable amount determined by the commission.
- C. The insurance or the surety bond shall be purchased from a company licensed to do business in New Mexico.
- D. The certificate of insurance or the surety bond filed with the bureau shall continue to be effective until thirty days after the date the bureau is notified in writing of the cancellation of the insurance or surety bond.

70-5-12. Power of bureau and commission to refuse to grant, suspend or cancel a license.

The bureau may refuse to grant a license to any applicant and may request the commission to suspend or cancel the license of any licensee if it appears to the bureau upon hearing, as provided in the LPG and CNG Act [this article], that an applicant or licensee has violated or failed to comply with any provision of law relating to LP gas or CNG or with any rule, regulation or order of the bureau or commission or that any licensee has demonstrated that he is incompetent or lacks knowledge in matters relevant to a license to such an extent that, in the judgment of the bureau, it would endanger the public safety to allow the licensee to continue to engage in LP gas or CNG activities or operations.

70-5-13. Provisions for hearings.

Upon receipt of written complaint from one of its representatives or by any person or party affected: the bureau may, if it finds probable cause for such complaint, request the commission to hold a hearing to consider the complaint under the provisions of the **LPG and CNG Act** [this article] and under such rules and regulations not inconsistent with that act. If at the hearing the commission finds that the licensee has violated or failed to comply with any of the provisions of the **LPG and CNG Act** or the rules and regulations of the bureau or commission, then the commission may revoke or suspend the license of the licensee. The bureau may investigate on its own motion any matters pertaining to the subject of the **LPG and CNG Act** and may hold such hearings, as it deems necessary. The bureau may also summon and compel the attendance of witnesses, require the production of any records or documents deemed by it to be pertinent to the subject matter of any investigation and provide for the taking of depositions of witnesses under such rules as it may prescribe.

70-5-14. Notice; hearing.

Notice of any hearing and of its time and place shall be given by certified mail not less than ten days, exclusive of the day of mailing, before the hearing. The notice shall be sent to the licensee and all persons involved. Any licensee against whom a complaint has been filed shall have the right to file answer, appear at the hearing, introduce evidence and be heard both in person and by counsel. In the hearing before the commission, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented.

70-5-15. Finding; record.

At the conclusion of any hearing held to consider a complaint filed against any licensee under the **LPG and CNG Act** [this article], the commission shall enter its finding and order in writing, and the finding and order shall be recorded in a permanent record to be kept by the division. A copy of the commission's finding and order shall be furnished to the licensee complained of

70-5-16. Appeal.

Any licensee whose license is canceled or suspended by order of the commission may appeal the decision by filing with the court of appeals a notice of appeal within thirty days after the date the order is made. The appeal must be on the record made at the hearing. The licensee shall **certify** in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the licensee, including two copies which he shall furnish to the commission. Upon appeal, the court of appeals shall set aside the decision and order of the commission only if found to be:

- A. Arbitrary, capricious or an abuse of discretion;
- B. Not supported by substantial evidence in the record; or

C. Otherwise not in accordance with law.

70-5-17. No formal notice required of hearing on application for license.

The same procedure, rights and penalties as specified in the LPG and CNG Act [this article] in the cases of revocation or suspension of licenses are available, where applicable, in cases where the bureau refused to grant a license, except that no formal notice of hearing on an application for license need be given an applicant, other than that he is given a reasonable opportunity to appear in support of his application before the bureau renders its order refusing him a license. Appeal shall be to the district court at Santa Fe County in all cases where an application for a license under the LPG and CNG Act is denied.

70-5-18. Civil penalty for failure to comply with act or any order, rule or regulation.

The failure of any person, firm or corporation or any association engaged in any LP gas or CNG activity or operation requiring a license by the bureau to comply, within forty-eight hours after the receipt of any certified order of the bureau or commission requiring compliance, with the laws relating to LP gases or CNG or any order, rule or regulation of the bureau or commission shall subject the person or the officers of the corporation to a civil penalty of one hundred dollars (\$100) for each day the violation continues, and the attorney general may institute civil actions in the district court of the county in which the violation occurs to recover penalties in the name and on behalf of the state.

70-5-19. Municipalities; taxes; license fees.

Nothing contained in the LPG and CNG Act [this article] shall be construed as preventing any municipality from collecting local occupation taxes or license fees under the provisions of any local ordinance, but licensees under the LPG and CNG Act are specifically exempted from application of the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978], the Uniform Licensing Act [61-1-1 to 61-1-3 1 NMSA 1978] and the Manufactured Housing Act [Chapter 60, Article 14 NMSA 1978] insofar as their LP gas operations or CNG equipment attached to or to be attached to motor vehicles are concerned.

70-5-20. Enforcement.

The bureau may enforce the laws relating to LP gases and CNG and any rules, regulations or orders adopted by it or the commission pursuant to those laws by injunction in the district courts, which remedy shall be in addition to the civil and criminal penalties provided in the LPG and CNG Act [this article]. The chief and the inspectors of the bureau may issue citations for violation of the LPG and CNG Act.

70-5-21. Misdemeanor.

Any person violating any provision of the LPG and CNG Act [this article] or the rules, regulations or orders of the bureau or the commission issued pursuant to that act is guilty of a misdemeanor and shall be punished by a fine levied in a magistrate court of not less than fifty dollars (\$50.00) or more

than five hundred dollars (\$500) or by imprisonment for not more than ninety days or both.

70-5-22. Administrative penalty assessments.

The bureau may charge an administrative penalty for any violation of the LPG and CNG Act [this article] or the rules, regulations, codes or orders of the bureau.

70-5-23. Containers to be filled only by owner or upon the owner's authorization.

Any LP gas container shall be filled only by the owner or upon the owner's authorization.
